

REMARKS**I. General**

Claims 1-27 are pending in the current application. Claim 11 has been amended. Claims 1-10 and 18-22 have been allowed. Applicant thanks the Examiner for the indication that dependent claims 12-15 and 24-27 would be allowable if rewritten in independent form. The outstanding issues are:

- Claims 11 and 23 are rejected under 35 U.S.C. § 103(a) as being unpatentable over *Raleigh et al.* (U.S. Patent No. 6,452,981, hereinafter *Raleigh*) in view of *Walton et al.* (U.S. Patent Application No. 2002/0154705, hereinafter *Walton*);
- Claim 16 is rejected under 35 U.S.C. § 103(a) as being unpatentable over *Raleigh* in view of *Walton*, and further in view of *Yeom et al.* (U.S. Patent No. 6,529,496, hereinafter *Yeom*); and
- Claim 17 is rejected under 35 U.S.C. § 103(a) as being unpatentable over *Raleigh* in view of *Walton*, and further in view of *Anvekar et al.* (U.S. Patent No. 6,594,475, hereinafter *Anvekar*).

In response, Applicant respectfully traverses the outstanding claim rejections, and requests reconsideration and withdrawal in light of the remarks presented herein.

II. Claim Amendments

Claim 11 has been amended to correct an inadvertent error discovered during preparation of this response by inserting a period at the end of the claim. No new matter is presented. Moreover, this correction is not intended to narrow the scope of the claim.

III. Rejections under 35 U.S.C. § 103(a)

To establish a prima facie case of obviousness under 35 U.S.C. § 103(a), three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine the references' teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. See M.P.E.P. § 2143. Applicant respectfully asserts that the rejections do not satisfy the basic criteria.

A. Claims 11 and 23

Claims 11 and 23 are rejected under 35 U.S.C. § 103(a) as being unpatentable over *Raleigh* in view of *Walton*. Office Action, page 2. Applicant traverses the rejections and asserts that the claims are allowable, at least, for the reasons stated below.

Claim 11 recites “assigning ... said plurality of channels to said plurality of antennas . . . by selecting the antenna assignment that minimizes total forward-link transmit power.” Similarly, claim 23 recites “assigning ... said plurality of channels to said plurality of antennas ... such that ... assignment of said plurality of channels to said plurality of antennas minimizes total forward-link transmit power.” The Examiner admits that *Raleigh* does not teach or suggest these limitations, and relies upon *Walton* as meeting the limitations. Office Action, page 2. At the passage cited by the Examiner, *Walton* teaches:

“... the transmit power on the forward ... links can be controlled to minimize interference and maximize system capacity ... if the path loss from a particular antenna is great, transmission from this antenna can be reduced or muted since little may be gained at the receiver unit.” *Walton*, paragraph [0137].

In other words, *Walton* merely teaches varying forward-link power for a particular receiver unit in response to path loss. Applicant asserts that, while *Walton*’s teaching may provide improved channel quality for that particular receiver, it actually increases the total forward-link power for the coverage area. *See* present specification, paragraph [0010]. In contrast to the power control scheme in *Walton*, the present invention minimizes total forward-link transmit power. As set forth in the present specification:

“[A]ssignment of signals to particular antenna beams in accordance with embodiments of the present invention increases the channel quality for the signals associated with the highest forward-link transmit power levels to a significant degree. Upon assignment to optimal antennas, the transmit power levels associated with those channels will be appreciably reduced. However, the assignment of other signals to non-optimal antennas (e.g., out of the remaining antennas) does not appreciably reduce their channel quality or appreciably increase their transmit power levels. Thus, their assignment to non-optimal antennas will have a minimal effect on the signal quality thereof while minimizing individual signal transmit power variance and optimizing overall system signal quality.” Present specification, paragraph [0011].

Applicant respectfully submits *Raleigh* in view of *Walton* does not teach or suggest minimizing total forward-link transmit power, as recited by claims 11 and 23. Accordingly, Applicant respectfully requests that the 35 U.S.C. § 103(a) rejection of record with respect to claims 11 and 23 be withdrawn.

In rejecting claim 23, the Examiner states that “[r]egarding claim 23, this claim is rejected for the same reason as set forth in claim 11.” Office Action, page 3. Applicant believes that the rejection of claim 23 is improperly grouped with the rejection of claim 11, and is not clearly developed to such an extent that the Applicant may readily judge the advisability of an appeal. Therefore, the rejection does not comply with M.P.E.P. §707.07 (d) and 706.07(a).

Moreover, claim 23 recites, in part, “assigning ... said plurality of channels to said plurality of antennas ... such that ... no more than one channel is concurrently transmitted from a respective antenna” This aspect of the claim remains unaddressed by the rejection of record, and a *prima facie* showing of obviousness under 35 U.S.C. § 103(a) has not been made. See M.P.E.P. § 2143. It is respectfully submitted that the combination of *Raleigh* and *Walton* does not teach or suggest, at least, the above-referenced feature. Accordingly, Applicant respectfully requests that the 35 U.S.C. §103(a) rejection of claim 23 be withdrawn. Should the Examiner disagree that claim 23 is patentable, the Examiner is respectfully invited to issue a new rejection that complies with M.P.E.P. §707.07 (d) and 706.07(a).

B. Claim 16

Claim 16 is rejected under 35 U.S.C. § 103(a) as being unpatentable over *Raleigh* in view of *Walton*, and further in view of *Yeom*. Office Action, page 2. Applicant traverses the rejections and asserts that the claims are allowable, at least, for the reasons stated below.

As noted above, the combination of *Raleigh* and *Walton* fails to teach or suggest, at least, “selecting the antenna assignment that minimizes total forward-link transmit power,” as required by independent claim 11. The Examiner does not rely upon *Yeom* as teaching or suggesting the above-referenced feature, and Applicant asserts that *Yeom* does not teach or suggest the above-referenced feature. Consequently, the combination of *Raleigh*, *Walton*,

and *Yeom* fails to teach or suggest all of the limitations of independent claim 11. Dependent claim 16 depends from claim 11, and thus inherits all the limitations of that independent claim. Therefore, Applicant respectfully submits that claim 16 is allowable, at least, for the reasons discussed above. Accordingly, Applicant respectfully requests that the 35 U.S.C. § 103(a) rejection of record with respect to claim 16 be withdrawn.

C. Claim 17

Claim 17 is rejected under 35 U.S.C. § 103(a) as being unpatentable over *Raleigh* in view of *Walton*, and further in view of *Anvekar*. Office Action, page 2. Applicant traverses the rejections and asserts that the claims are allowable, at least, for the reasons stated below.

As noted above, the combination of *Raleigh* and *Walton* fails to teach or suggest, at least, “selecting the antenna assignment that minimizes total forward-link transmit power,” as required by independent claim 11. The Examiner does not rely upon *Anvekar* as teaching or suggesting the above-referenced feature, and Applicant asserts that *Anvekar* does not teach or suggest the above-referenced feature. Consequently, the combination of *Raleigh*, *Walton*, and *Anvekar* fails to teach or suggest all of the limitations of independent claim 11. Dependent claim 17 depends from claim 11, and thus inherits all the limitations of that independent claim. Therefore, Applicant respectfully submits that claim 17 is allowable, at least, for the reasons discussed above. Accordingly, Applicant respectfully requests that the 35 U.S.C. § 103(a) rejection of record with respect to claim 17 be withdrawn.

IV. Conclusion

In view of the above amendment, applicant believes the pending application is in condition for allowance.

Applicant believes no fee is due with this response. However, if a fee is due, please charge our Deposit Account No. 06-2380, under Order No. 65948/P071US/10315934 from which the undersigned is authorized to draw.

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Respectfully submitted,

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